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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

February 29, 1996

File Number 20600-28.8.1

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D. C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 95-185 (Responsive Comments)

Dear Sir or Madam:

Enclosed pursuant to Paragraph 132 of the above-cited Notice of Proposed Rulemaking, is the original plus nine copies of Comments filed herein by The Westlink Company and by The Allied Personal Communications Industry of California.

By a copy of this letter, I am also sending each document to Janice Myles and to International Transcription Services.

Finally, I am enclosing an extra copy of each submission which we request that you kindly file-stamp, and return to us in the enclosed, self-addressed, stamped envelope.

Thanking you for your consideration, I am

Sincerely,

David M. Wilson

DMW:jdi
Enclosures
cc: Ms. Janice Myles
International Transcription Services, Inc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 02554

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers	)	

COMMENTS OF THE WESTLINK COMPANY ("WESTLINK")

Dated: February 29, 1996

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TABLE OF CONTENTS

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MAR - 4 1996
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COMMENTS OF THE WESTLINK COMPANY ("WESTLINK")

The Westlink Company ("Westlink") acquired the assets of U S WEST Paging, Inc. in June, 1994, and since then has continued and expanded its one-way paging business in fourteen states.[1] Westlink's comments are submitted in response to this Commission's Notice of Proposed Rulemaking, FCC 95-505 (Released January 11, 1996) ("NPRM"). They focus on the NPRM insofar as it affects so-called narrowband commercial mobile radio services ("CMRS").

Westlink is grateful to the Commission for initiating this proceeding, which is of particular concern to paging carriers. While such service providers have been clearly

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[1] Arizona, California, Colorado, Idaho, Iowa, Minnesota, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, and Wyoming.

characterized as co-carriers by the Omnibus Budget Reconciliation Act of 1993, Publ. L.No. 103-66, Title VI, §6002b(2), 107 Stat.312, 392 ("OBRA"), and by numerous declarations before and after OBRA, they have never been provided with true co-carrier treatment by the local exchange carriers ("LECs") with which they interconnect. Despite numerous injunctions to provide "mutual compensation", the LECs have seldom if ever done so for paging carriers. On the contrary, the interconnection arrangements offered to narrowband CMRS providers by many LECs are less favorable than those currently extended to other carriers, both wireless and landline, even though narrowband CMRS traffic is far more profitable to the LECs, and even though narrowband CMRS providers assume substantial termination functions from the LECs.

In accord with Note 171 of the NPRM, these comments will first offer a general overview describing the nature of paging traffic, and the need for substantial reformation of current interconnect arrangements. See Section I below. Westlink will then address existing and proposed compensation arrangements between LECs and narrowband CMRS providers. See Section II(A) below. Westlink will also discuss issues raised by the NPRM concerning the relationship between negotiated and tariffed approaches (Section II(B)(1)) and state/federal jurisdictional issues (Section II(B)(2)). Finally, Westlink will address the question presented by one-way paging calls that are delivered by inter-exchange carriers ("IXCs") to narrowband CMRS providers (Section III).

I.

GENERAL COMMENTS

This Commission has consistently and unambiguously directed mutual compensation for LECs and CMRS providers which terminate calls on each other's networks.[2] This rule has been codified by the Telecommunications Act of 1996 ("Act of 1996") at Section 251b(5). When mobile carriers terminate such calls, they perform similar functions as LECs which terminate calls delivered to them by other LECs, or by IXCs. In doing so, the CMRS providers clearly enhance the bottom-line revenues of the originating LECs. This is because the LECs in nearly all cases bill their subscribers at rates which assume performance by the LECs of both originating and terminating functions. When the CMRS provider assumes the termination function, it stands in the same shoes as the LEC which provides terminating access to IXCs and other landline carriers. Put most simply, if the LECs are entitled to compensation for terminating calls directed to them, so should CMRS providers be paid when traffic goes in the other direction. <u>If anything, the argument for mutual compensation is stronger for paging traffic than for other calls</u>. Thus:

- Paging calls are, almost without exception, originated by subscribers to an LEC's or IXC's service.

- The paging carrier terminates no traffic on the LEC's network, so that there are no reciprocal functions assumed by the LEC to balance those performed by the paging service provider.

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[2] NPRM, note 2, citing Implementation of Sections 3(n) and 332 of the Communications Act [etc.], Second Report and Order, 9 FCC Rcd 1411, 1497-98 (1994)("CMRS Second Report"). See also Declaratory Ruling, 2 FCC Rcd. at 2915.

- The completion rate for paging calls is nearly 100%. This means that the originating LEC (or IXC) is able to bill and collect for 100% of the calls that are directed to paging numbers and to charge rates which in most cases assume only a 75% completion rate.

- Paging calls are of short duration, and seldom consume more than 20 - 30 seconds of conversation time. Yet, the LECs charge the calling party in whole minute increments.

- In most cases, the rate charged to the land caller is determined by cost studies approved by the state regulatory commission. These studies assume that the originating LEC is responsible for the initial set-up, the transport, and the termination of the underlying call.

- Though the LECs bill and keep for the entire call, it is the paging carrier which performs the termination function, and much of the transport function for calls that are directed to paging numbers.

- Paging calls often stimulate further usage of the landline network, as where the paging customer responds to a message by placing a separate call.

It is helpful to compare the routing of a land-to-land call with the path taken by a land-to-mobile call. One key difference is that the typical intra-LATA land-to-land call is originated <u>and</u> terminated by an LEC. Thus:

<u>**Figure 1**</u>**:**

Calling Party→ Serving Wire Center ("SWC") → Tandem Office ("TDM") → SWC → Called Party

In contrast, where an intra-LATA call is directed to a paging number, the call is generally delivered to the paging carrier at either the originating SWC (this would be a "Type 1" arrangement), or at the LEC tandem (a "Type 2" arrangement). In either case, the terminating switch and loop are those of the paging carrier. Thus:

Figure 2 (Type 1):

Calling Party → SWC

↓

Paging Terminal → Transmitters → Called Pager

Figure 3 (Type 2):

Calling Party → SWC → TDM

↓

Paging Terminal → Transmitter → Called Pager

It is difficult to exaggerate how profitable paging calls are for landline carriers when they are interchanged in the above manner. Such calls are short in duration, easy to carry, and 100% revenue producing. Though the costs of carriage are markedly less, the originating caller is typically billed full tariffed rates, with the proceeds going directly to the pockets of the landline carriers. And while "bill and keep" is a form of mutual compensation which is entirely appropriate as between landline and two-way CMRS providers, it is singularly inappropriate for paging carriers. As has been conceded by nearly all commentators, "bill and keep" makes most sense where (1) the traffic exchanged between interconnecting carriers is reasonably balanced, or (2) termination costs are negligible.[3] In a paging context however, the traffic is all in one direction (NPRM paragraph 40), and termination costs, as determined in numerous proceedings, are far from negligible.

II.

EXISTING AND PROPOSED INTERCONNECTION ARRANGEMENTS BETWEEN LECS AND ONE-WAY CMRS PROVIDERS

A. *Existing Interconnection Arrangements Make A Mockery of This Commission's Directives In Favor of Mutual Compensation.*

Westlink interconnects primarily with Pacific Bell ("Pacific") in California and Nevada, and with U S WEST in other states. Each of these arrangements should be examined individually.

(1) *Pacific Bell Does Not Provide Mutual Compensation To Wireless Service Providers*

Pacific's interconnect offerings are currently embodied in negotiated, interim contracts, which will remain in effect until resolution of numerous protests which have been filed against Pacific's attempt to tariff its CMRS interconnect terms with the California Public Utilities Commission ("CPUC").[4] These contracts distinguish between situations where

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[3] See NPRM, Notes 29 and 34-36; see also Gerald W. Brock, Price Structure Issues in Interconnection Fees at p.1 (March 30, 1995) cited at NPRM, Note 80.

[4] Contrary to the implication of NPRM (Note 26), the CPUC has not yet decided on "bill and keep" and/or mutual compensation for wireless/LEC interconnect arrangements. These issues are the subject of ongoing proceedings.

paging units are accessed by dialing individually assigned telephone numbers which are "homed" for routing purposes in the LEC's end-offices (Type 1 arrangements), and situations where the numbers reside in the LEC's tandem offices (Type 2 arrangements). Thus:

a. Type 1 Interconnection: Figure 2 above illustrates a Type 1 interconnection scheme. The paging unit is identified by a direct in-dial ("DID") number which is deemed to reside in a particular Pacific Bell end-office. The calling party pays Pacific full tariffed rates for calling the paging number, even though the paging carrier often takes delivery of the call at the originating serving wire center, and always terminates the call through its own switch and transmitter network. The paging carrier thus assumes the cost of transporting the call between the originating serving wire center and the paging terminal, as well as from the paging terminal to the transmitter and ultimately to the called paging unit. In addition to collecting a flat, per month charge from the paging carrier for the SWC-paging terminal link, Pacific will in most cases collect at least four cents per call from its own customers.[5] Nothing is paid to the paging carrier for its role in terminating each call.

b. Type 2 Interconnection (With LP-2 Option): As illustrated by Figure 3 above, the paging carrier is required to pay a substantial up-front fee for programming its telephone numbers in Pacific Bell's switches. The charge for each 10,000 number block (or

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[5] With few exceptions, Pacific does not have flat-rated, wire-area tariffs for its land subscribers. Rather, the residential subscriber, in exchange for a flat monthly charge of $11.25, is entitled to unlimited calling within a 12 mile radius of his/her serving wire center. Business callers, who originate most paging calls, pay a flat rate of $10.32 plus four cents for the first minute of each local call, and one cent for each succeeding minute of conversation time. Where more than 12 miles separates the originating serving wire center from the wire center where the called number is "homed", an added "zone unit message" ("ZUM") or toll charge will be imposed on the calling party, whether residential or business. See generally CPUC Decision 94-09-065 (1994).

"NXX") ranges between $15,000 and $38,000. Intra-LATA traffic addressed to such NXXs is routed to a Pacific tandem office, with the paging carrier being obliged to carry the traffic beyond the tandem to its own terminal, and to terminate it on its own network. The calling party pays Pacific the tariffed rate for a local call, i.e., usually four cents, while the paging carrier pays a transport charge of 1.2 cents (more or less) to Pacific Bell where the call in question has been carried more than 12 miles from the originating serving wire center to the tandem. Nothing is paid to the paging carrier for terminating the call.

c. Type 2 Interconnection (Without LP-2 Option): Here, the NXX is also "homed" at a Pacific tandem, but the calling party pays full tariffed rates, which may include ZUM and toll charges where the call is carried more than 12 miles. These rates are intended to recover the costs attributable to termination of the call. But, nothing is paid to the paging carrier which has assumed responsibility for this function.

2. *U S WEST Does Not Provide Mutual Compensation To Wireless Carriers*

Like Pacific Bell, U S WEST offers three interconnect alternatives for paging carriers. Thus:

a. Type 1: Here the carrier maintains (at its own expense) entrance facilities to various U S WEST end-offices where inventories of DID numbers are maintained. Each number is charged to the paging carrier at $.15/month. The calling party pays full tariffed rates when addressing a paging number, even though the call is delivered at the end-office to the paging carrier for termination.[6] Nothing is paid to the paging carrier for terminating the call, though substantial termination charges ($.035 call for local switching and between $.0125/min. and $.0388 for transport) are imposed when mobile-originated calls are terminated by U S WEST.

b. Type 2 Interconnection (Wide Area Calling): Here, the paging carrier is obligated to establish and maintain entrance facilities at the U S WEST local and toll tandem levels. An upfront charge of $8,700 is paid for programming the first NXX, and $5,000 for subsequent NXXs in the relevant LATA. Local calls are delivered through the serving wire center, with the calling party paying full tariffed rates, and the paging carrier assuming the termination function. Other intra-LATA calls are delivered to the paging carrier at the tandem level, with the calling party being charged local rates, and the paging carrier being charged a premium of $.09 per minute for local switching and transport. A variant allows the paging carrier to pay for the termination by them of all mobile-originated calls, both local and toll, at a blended rate which ranges between $.03 per minute (in states like Oregon and Washington) to $.052 per minute (in Wyoming). U S WEST does not compensate the paging carrier for terminating the traffic originated by it under these options.

c. Type 2 Interconnection (without Wide Area Calling): Here, the point of delivery is also at the U S WEST local and toll tandem offices. However, in this case,

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[6] Unlike Pacific Bell, U S WEST has not, for purposes of billing its own Subscribers, established fixed mileage bands around each of its serving wire centers. Instead, each SWC constitutes its own local calling area with calls between SWCs generally giving rise to toll charges. Fixed monthly charges to U S WEST subscribers tend to be higher than to Pacific's subscribers; however, local calling areas also tend to be larger. U S WEST subscribers may also obtain Extended Area Service ("EAS"), which effectively allows them to place calls to other exchanges without incurring usage sensitive toll charges.

the calling party pays full tariffed rates, whether local or toll, while the paging carrier pays nothing for additional switching and transport. Nothing is paid by U S WEST to the paging carrier for assuming the termination function.[7]

3. *Discussion*:

The Pacific and U S WEST interconnect models are egregiously discriminatory in multiple ways. For example, the termination charges imposed on mobile-to-land traffic are significantly higher than the average access charges described in NPRM note 83, not to mention the access charges imposed by these LECs themselves. Then there is the total lack of payments by the LECs when the termination function which is assumed by the paging carrier for most Type 1, and all Type 2 paging calls. This function is technically indistinguishable from that assumed by Pacific Bell and U S WEST when they terminate calls originated by two-way mobile carriers, competing local carriers ("CLCs") and IXCs. In those situations, the termination charges imposed by the LECs are far from nominal. For example, Pacific's terminating access charges to IXCs are the equivalent of 1.75 cents per minute (assuming a two minute call), while its call termination charges for mobile-originated calls approximate 2.48 cents per minute. Similarly, U S WEST's charge for terminating mobile-originated calls is 3.5 cents per call plus a transport charge of between 1.25 cents/minute (0

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[7] In states like Oregon and Washington, the situation is complicated by the presence of multiple independent telephone companies. Whenever a subscriber to an independent telco calls a U S WEST-administered paging number, the result is a toll charge. This is because of the prevailing practice whereby the independent telco delivers the call to the U S WEST tandem or end-office in which the called number is deemed to reside, rather than delivering it directly to the paging carrier which in many cases will maintain a point of connection on the independent network. See further discussion below, note 12 and accompanying text.

Mileage Band) and 3.88 cents/minute (Mileage Band 5). Its charge for terminating interstate calls is about 2.03 cents/minute (excluding CCLC).

There are other verifiable instances of price discrimination against CMRS carriers. For example, Pacific has been under particular pressure to reduce interconnect charges for certain valuable landline carrier accounts. One of these, Metropolitan Fibre Systems ("MFS"), is referred to at Note 71 of the NPRM. The MFS/Pacific contract provides for a reciprocal termination charge of .75 cents per minute, or .87 cents per minute, depending upon whether the relevant call is "local" or not. Moreover, the MFS contract reveals that unlike CMRS providers, MFS is not obligated to pay anything to Pacific for programming MFS numbers in its switches.[8]

The hard fact is that MFS and the IXCs have enjoyed greater leverage both in the market and before local regulators than have CMRS providers, including most especially paging service providers. When a Pacific subscriber addresses a call to an MFS number, Pacific collects and keeps its full tariffed rate for the call, and pays MFS between .75 cents and .87 cents per minute when the call is terminated by MFS. When an IXC's subscriber addresses a call to a U S WEST subscriber, the IXC bills and collects full tariffed rates from its customer, and pays U S WEST substantial termination charges. However, where an LEC or IXC subscriber calls a paging number, the paging company gets nothing while the originating carrier "bills and keeps" everything.

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[8] The MFS contract was approved by the CPUC on January 17, 1996 by its Resolution Number T-15824. See NPRM, paragraph 21 regarding Pacific's obligation to extend similar arrangements to CMRS providers.

Another form of discrimination relates to the LECs' performance in their role as code administrators. All co-carriers must switch calls that are addressed to North American Numbering Plan ("NANP") numbers. To do so, they must program NXX codes into their own switches. While the costs of this programming are absorbed by the LECs and IXCs when dealing among themselves, the treatment is quite different for codes that are allocated by Pacific Bell and General Telephone to CMRS providers. While Pacific charges such providers up to $38,000 per NXX, it pays nothing in return to cellular and other two-way wireless carriers which are obligated to perform exactly the same programming function as to the codes which are assigned to Pacific's subscribers.[9]

The discrimination goes further yet. The Los Angeles LATA - the most populous in the country - is effectively divided between Pacific Bell (about 60% of land stations) and General Telephone (about 40%). Each company allocates NXXs to CMRS providers, and "homes" them in its own tandem offices, rather than recognizing that calls to such numbers should be routed to the points of presence established by the relevant wireless carriers. The result is excessive and unnecessary transport of land-to-mobile calls. Despite repeated assurances over many years that it would stop the practice, Pacific continues to route all calls placed by its subscribers to GTE-assigned CMRS numbers to the GTE tandem where the code is deemed to reside, rather than directly to the CMRS provider to which the code is actually assigned. The result is a toll call to Pacific subscriber and a dramatic, chilling effect on calls by Pacific's subscribers to paging and cellular numbers. The same thing is true where

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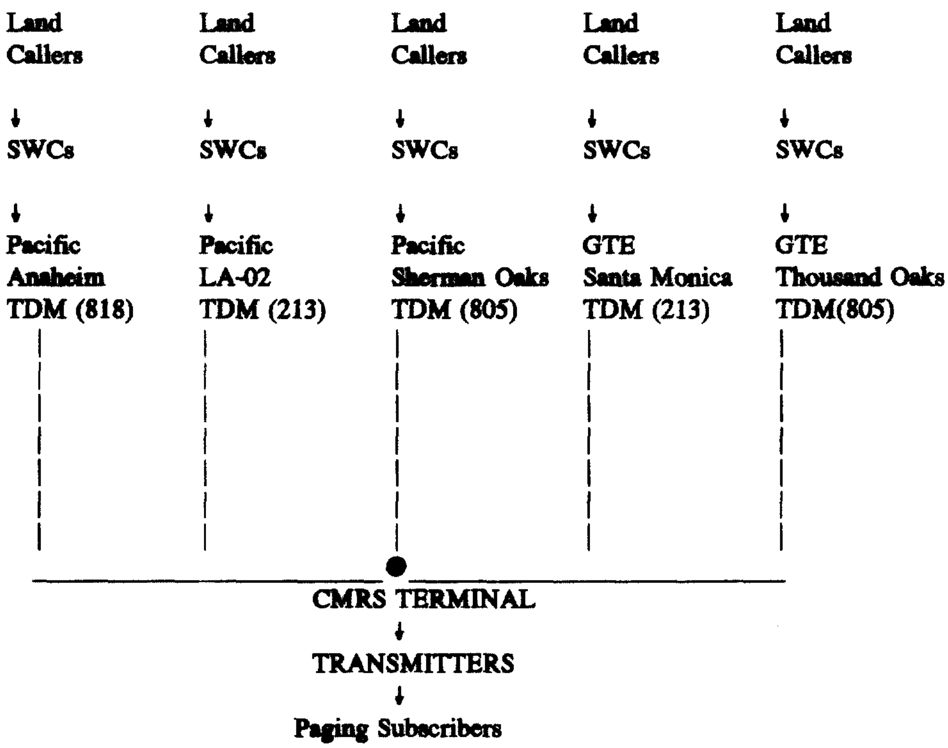
[9] The Act of 1996 at Section 251e(2) requires that costs relating to number administration shall be borne on a "competitively neutral basis".

a Pacific customer whose SWC is sub-tended by one tandem calls a paging number which is deemed to reside in another Pacific tandem. Even though the paging carrier may maintain its own POP in both tandems, the call will only be delivered to the carrier after it has been transported to the tandem where the called number is deemed to reside.[10]

[10] Large and medium size CMRS providers in the Los Angeles LATA generally maintain points of presence in all Pacific and GTE tandem offices, and in many additional end offices. Accordingly, the most efficient routing scheme would be for Pacific to route all land-to-mobile calls to the CMRS pop which is closest to the originating serving wire center. This practice would substantially decrease the ZUM, toll, and transport charges that are collected by Pacific from its own customers and from the CMRS provider in question. Pacific, however, persists in routing the call to the tandem where the called number is homed, and only then turning it over to the mobile service provider. As noted in the text, the impact is particularly egregious where the called number is located in a GTE tandem, since the result in all cases is a toll charge to Pacific's subscriber. Thus:



In the above illustration, a call from a Pacific subscriber in Anaheim (the 818 NPA) to a GTE-administered paging number in the 805 NPA would be delivered to GTE's Thousand Oak's tandem before being turned over to the CMRS provider. GTE, in contrast, would route a land/mobile call from its own Thousand Oaks customer directly to the CMRS provider, even though the called number is administred by Pacific out of its Anaheim tandem.

As noted above, U S WEST behaves no differently in states like Oregon and Washington where GTE and other independent telcos have a significant presence. All calls by the subscribers of one telco are rated as toll calls when addressed to a paging number that is administered by another telco. This is true even though the paging carrier may maintain points of presence on all of the independent networks - notwithstanding these POPs, calls will not be routed directly to the paging carrier.

This phenomenon is not the result of telco routing conventions or technical impossibility. GTE, which is not generally known as an innovative company, has for several years "honored" the CMRS numbers administered by Pacific. This means that calls directed by GTE subscribers to Pacific's wireless codes will be delivered directly from the GTE tandem to the wireless carrier, rather than over the roundabout path used by Pacific when its customers call wireless units identified by GTE numbers. In Westlink's view, the unbundling requirement of the Act of 1996 at Section 251c(3) now requires efficient routing when requested by a CMRS service provider.

4. *Proposal*:

Clearly, "mutual compensation" under existing CMRS/LEC arrangements means unilateral compensation for the LECs, and nothing for the CMRS providers. The LECs effectively bill and keep their own subscribers for all land-to-mobile calls, keep all proceeds, and pay nothing for the termination functions assumed by the wireless carriers. Indeed, both Pacific Bell and U S WEST often charge wireless carriers for transport and other interconnect services. There is also gross discrimination in LEC administration of telephone numbers, with substantial code-opening charges being imposed on CMRS carriers, where they are not imposed on other carriers, and with the LECs' generally refusing to cooperate in routing land-to-mobile calls in a cost-efficient way.

The reason for all of this is a lack of leverage as between CMRS providers and their LEC interlocutors. For paging carriers, this bargaining weakness would continue, and indeed would be made worse by a "bill and keep" regime. "Bill and keep" for narrowband CMRS providers perpetuates the unfairly profitable arrangements which now exist. What Westlink proposes, and this Commission has the jurisdiction to grant, is immediate reaffirmation of the following:

- The interconnection rights defined by Section 201 of the Telecommunications Act of 1934, reaffirmed by OBRA, and expanded by the Telecommunications Act of 1996 ("1996 Act"), apply without reservation to the relationships between narrowband CMRS providers, and other telecommunications service providers.

- Interconnection charges between service providers should be based on long-run incremental costs, and not on direct imbedded costs, or much less on fully allocated costs formulas. NPRM paragraphs 47 et seq.[11]

- The interconnection arrangements offered by the LECs to competitive local carriers and/or others must be offered without distinction to narrowband CMRS providers, assuming substantial technical equivalency. The rule against discrimination also means that where an LEC charges other providers to terminate their traffic, it must be prepared

[11] In California, interconnect charges by LECs to wireless carriers must be based on direct embedded costs CPUC Decision 92-01-016 (1992).

to pay such other carriers (when they) terminate the LEC's traffic. See Act of 1996, Section 251b(5).

□ "Bill and keep" is, in essence, an application of the rule favoring mutual compensation, and may be a fair interim practice for LECs and broadband CMRS providers. It is most emphatically not a reasonable solution for narrowband CMRS providers which terminate 100% of the calls handled by them, and where the relevant LEC has established a substantial termination charge for calls that go in the other direction.

□ The LECs should be ordered to enter into immediate good faith negotiations based upon the principle that narrowband CMRS carries are entitled to compensation that is comparable (or "symmetrical") to that charged by the LECs for terminating mobile-to-land traffic, CLC, and IXC originated traffic. See Act of 1996, Section 251c(1) and NPRM paragraphs 78 and 82.

□ The Commission should look with great suspicion on the current practice by some LECs of charging for dedicated and switched transport for land-to-mobile calls. Flat monthly charges for dedicated transport facilities and usage-sensitive charges for switched transport services are only appropriate (if at all) when it is clear that the originating LEC is not already collecting for such functions from its own customers.

□ It is not appropriate for an LEC unilaterally to charge CMRS providers for programming NXX codes. In a co-carrier environment, it must be recognized that all carriers have programming obligations vis-a-vis each other's numbers, and that unless charges for these tasks are reciprocal they are not "competitively neutral", as required by the Act of 1996, Section 251e(2).

- LECs should not be permitted to increase transport charges to wireless carriers, and/or charges to their own customers as a result of roundabout routing. Instead, land-originated calls should be directed to the wireless POP which is nearest to the originating service wire center.

B. *Tariffs and Jurisdictional Issues*

(1) *Tariff Mechanisms Cannot Be Used To Shield LECs From The Obligation To Negotiate Carrier Specific Interconnect Agreements*

Conventional wisdom is that tariffed interconnect arrangements provide the best protection for CMRS providers from arbitrary and discriminatory treatment by LECs. Unfortunately, such is not always the case. In California and other western states, the existence of interconnection tariffs has often been used by LECs as a shield against one-on-one negotiations. In essence, the LECs argue that tariffs, once filed and approved, enjoy a presumption of reasonableness and that any deviation would constitute unlawful discrimination. CMRS carriers proposing innovative alternatives often get short shrift.

The California PUC has not been helpful. Prior to 1992, CMRS interconnect arrangements were the subject of negotiated contracts, though such contracts would from time-to-time incorporate by reference individually tariffed rate elements.[12] Then, the CPUC declared that paging and conventional two-way (but not cellular) interconnection should be the subject of formally filed tariffs.[13] Pacific Bell thereupon filed its Application 92-06-

[12] CPUC Decision 90-06-025 (1990).

[13] CPUC Decision 92-01-016 (1992).

009 and a related Petition seeking to require that all interconnection terms and conditions be tariffed. The CPUC granted this petition (over the objection of GTE and the cellular industry) in 1994[14] only to come to the opposite conclusion five months later when it stated that interconnection between LECs and CLCs should be the subject of individually negotiated contracts.[15]

The result is utter confusion, and Westlink is grateful that this Commission is revisiting the matter. In doing so, it should be mindful that while a tariffed regime may seem to be more friendly to smaller entities, it has often been the case that while the LECs have supported tariff approaches, CMRS providers have opposed them. For such providers, tariffs are too often a closed world which allow for no deviation.

This is not to say that the contract mechanism cannot also be abused. One solution would be to require tariffs as a sort of "common denominator", available to all, but to make it clear that tariffs give rise to no presumption of reasonableness or suitability when an individual provider desires alternative arrangements. In such situations, the Act of 1996 encourages interconnection contracts that are negotiated in good faith subject to overall regulatory scrutiny. These contracts should be filed under 47 U.S.C. §211, and made available for public inspection. It should also be declared without ambiguity that wherever another entity is able to meet reasonable technical pre-conditions, it too should have the benefit of a contract rate agreed to by the LEC with a third party.

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[14] CPUC Decision 94-04-085 (1994).

[15] CPUC Decision 94-09-065 (1994).

(2) ***The Communications Act of 1996 Confirms This Commission's Jurisdiction To Prescribe The Basic Principles of CMRS Interconnection For <u>Both Intra-State and Inter-State Purposes.</u>***

The original federal/state jurisdictional boundary was defined by the Communications Act of 1934 ("Act of 1934"). 47 USC §§152(a)(b). The Act of 1934 also established the fundamental principle that this Commission may require telephone corporations to interconnect, and that it may also take steps to ensure that all service offerings are non-discriminatory. See 47 USC §201.

After passage of the Act of 1934, and prior to the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), this Commission has from time-to-time reaffirmed the general interconnect obligation, together with the need for interconnection rates to be cost-based and non-discriminatory. It has also established the mutual compensation rule, together with various requirements regarding the administration of the North American Numbering Plan ("NANP"). However, this Commission has not in all cases declared precisely whether its interconnect-related decisions apply to intra-state as well as inter-state services.

OBRA did not necessarily clarify matters. While reaffirming the right of CMRS providers to fair and reasonable interconnect terms, and pre-empting outright state jurisdiction over CMRS rates, OBRA states somewhat ambiguously that it is not intended to expand or limit the jurisdiction granted to the FCC under 47 USC §201. 47 U.S.C. §332c(1)(B).

The Act of 1996 continues many elements of state jurisdiction over interconnection. Local commissions have a defined role in supervising inter-carrier negotiations, and in approving or rejecting their results. Unfortunately, however, there is no statement as to whether this general jurisdiction extends to CMRS providers, whose status under OBRA was not to be disturbed. Act of 1996, Section 253(e).

Many would argue that this Commission may and should cut through the confusion by means of a clear declaration that both inter-state and intra-state CMRS/LEC interconnection terms and conditions are properly pre-empted by the federal government. One basis for such a declaration might be OBRA's direction that no state should regulate the rates charged by CMRS carriers. See 47 U.S.C. §332(c)(3) as amended by OBRA. Most CMRS interconnection schemes are bilateral in nature, and under mutual compensation rules involve charges by CMRS providers to the LECs, as well as charges by the LECs to the CMRS providers. Since OBRA already pre-empts rate charges by CMRS carriers, it would seem impractical for jurisdiction over reciprocal charges by the LECs to remain with the states.[16]

Westlink will not at this point venture an opinion whether or not it is possible for federal and state interests to co-exist with regard to LEC/CMRS interconnect policy. However, Westlink emphasizes that this Commission has unquestioned power to establish the general principles for CMRS/LEC interconnection, and that these general principles should be regarded as pre-emptive. This is the approach taken by the Act of 1996 as to interconnection

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[16] The argument is actually a variant of the more general principle that where a state's exercise of its jurisdiction over intra-state communications cannot be exercised without impinging on a declared federal policy, the state must yield. The latest in a long line of cases discussing this "inseparability" or "impossibility" exception to 47 USC §152(a)(b) is *People of the State of California, et. al. vs. FCC*, 1996 U.S.App., Lexis (9th Cir.1996). Earlier cases include *California vs. FCC*, 905 Fed.2d 1217 (9th Cir.); *California vs. FCC*, 39 Fed.3d 919 (9th Cir. 1994); *Public Service Commission of Maryland vs. FCC*, 909 F.2d 1510 (D.C. Cir.1990); and *Louisiana Public Service Commission vs. FCC*, 476 U.S.355 (1986).

generally, i.e., the states are given a role in implementing certain principles which are clearly defined without reference to the distinction between intra-state and inter-state traffic. Thus:

◇ All telecommunication carriers must ensure technical compatibility, and inter-connectability with each other's networks. Act of 1996, Section 251a.

◇ All LECs must establish reciprocal compensation arrangements with other carriers for transporting and terminating each other's traffic. NPRM, Paragraph 14; Act of 1996, Sections 251b(5), 252d(2)(A)(i). Reciprocity includes not only termination charges, but also embraces NXX administration. Act of 1996, Section 251e(1).

◇ All LECs must negotiate interconnect arrangements in good faith, and must provide interconnection on a non-discriminatory basis to any requesting carrier. NPRM, Paragraph 14; Act of 1996, Sections 251c(1), 251c(2)(c).

◇ All LECs must unbundle network elements at the request of an interconnecting carrier. Act of 1996, Sections 251c(2)(B); 251d(3).

◇ All LECs must provide other carriers with actual co-location, or if the local PUC finds that such is not practical, must provide virtual co-location. Act of 1996, Section 251c(6).

The above principles make it possible for there to be immediate and effective federal pre-emption of the major questions which have for so many years vexed the relationship between LECs and their CMRS co-carriers. If the states are lax in applying these principles, or if local inconsistencies threaten this Commission's ability to ensure the establishment of new wireless technologies (See 47 USC §157), the Commission may take immediate remedial action both under the Act of 1996 and under the principles of *Louisiana PSC vs. FCC*, *supra*, and related cases.

III.

THE MUTUAL COMPENSATION RULE SHOULD APPLY EQUALLY TO THE RELATIONSHIP BETWEEN PAGING SERVICE PROVIDERS AND IXCs.

The technical and economic principles which apply to the CMRS/LEC relationship are equally valid when traffic is exchanged between IXCs and CMRS providers. The mutual compensation rule should therefore be applied to such situations. See NPRM, Paragraphs 16, 115-117.

When a land/land call is carried by an IXC, the typical routing is as follows:

Figure 4:

Calling Party → SWC → LEC/TDM → IXC → LEC/TDM → SWC → Called Party

Under current access charge policies, the IXC in the above context will compensate relevant LECs for their originating and terminating functions. In Pacific Bell territory, Terminating Feature Group D intrastate access charges (excluding CCLC) approximate 1.75 cents per minute. And while U S WEST intrastate access charges vary from state-to-state, its interstate charges are about 2.03 cents per minute, again excluding CCLC.